The debate concludes with a final rejoinder from Fenton and Arras claiming that, as they put it, Annas simply "has misunderstood and misrepresented our positions on several key points." Speaking as editors, such provocative phrases from both sides make for "Great Debate" fodder, indeed. We can only hope that, as readers, you concur.

This introduction does little to explain the arguments produced herein, and, undoubtedly, the end of this debate has not settled the problems addressed. We hope that in reading the full text of the exchanges, what is provided is useful insight and needed stimulation for future arguments concerning the relationship between bioethical issues and human rights concerns.

As was noted with the inaugural "Great Debate," this *CQ* department is dedicated to bringing "noted bioethicists [together in order to] debate ... some of the most perplexing contemporary bioethics issues." In that light, we hope you find the following a fruitful debate between respected colleagues who wish, like all of us, to reach better conceptual clarity for the sake of our moral attitudes and behaviors.

We (the editors) apologize for and it should be noted that in their Rejoinder to Annas, Fenton & Arras refer to material that was in the galley proofs of Annas's debate paper. In proofing, Annas chose to change some of his material, which directly impacted the Rejoinder. Unfortunately, those changes came too late for Fenton & Arras to make substantive changes. The impacted quotations are noted in Fenton & Arras's text.

Note

1. Annas GJ. *American Bioethics: Crossing Human Rights and Health Law Boundaries.* New York: Oxford University Press; 2005.

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Bioethics and Human Rights: Curb Your Enthusiasm

ELIZABETH FENTON and JOHN D. ARRAS

Globalism, Bioethics, and Human Rights

The call has been made for global bioethics. In an age of pandemics, international drug trials, and genetic technology, health has gone global, and bioethics must follow suit. George Annas is one among a number of thinkers to recommend that bioethics expand beyond its traditional domain of patient–physician interactions to encompass a broader range of health-related matters. Medicine, Annas argues, must "develop a global language and a global strategy that can help to improve the health of all of the world's citizens."[1] Individual countries cannot address global health issues, and culturally specific principles are inadequate for addressing global bioethics concerns. We will need a language

This paper represents the first installment of our larger project on bioethics and human rights. The second part, on human rights and access to health-related goods, is available as Arras JD, Fenton EM. Bioethics and human rights: Access to health-related goods. *Hastings Center Report* 2009;39:27–38.

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and moral framework grounded in a foundation of universally shared, transcultural judgments about humankind that will also recognize moral pluralism. The claim has been made that such a foundation already exists in human rights, and that human rights should, therefore, be the new *lingua franca* of bioethics.

There are good reasons for advancing this claim. First, there is a significant overlap between the concerns of public health (which encompasses many global health issues) and the concerns of human rights. Both are interested in the many social conditions that determine health and overall well-being, such as adequate food, water, shelter, and basic healthcare. Annas has argued that the Universal Declaration of Human Rights should serve as the code of ethics for public health, because both seek to provide ''the conditions under which humans can flourish.''[2]

Second, human rights discourse, as Robert Baker points out, ''is already the accepted language of international ethics''; it is, ''the lingua franca of the international community.''[3] As such, it serves as the ubiquitous mode of expressing social criticism and is a universally shared framework for addressing social problems.

Third, the human rights movement has both political and legal dimensions that mere moral appeals manifestly lack. In contrast to bioethics scholars scribbling away in their ivy-covered studies, advocates for human rights enjoy the political support of a worldwide network of influential international organizations (e.g., UNESCO, WHO, UNAIDS) and nongovernmental organizations (NGOs), such as Amnesty International, Global Lawyers and Physicians, and Doctors without Borders, for whom human rights has become a kind of moral–political Esperanto. In addition, because the moral claims of the human rights movement are embedded in legally binding covenants[4] that have been ratified by many state governments, they pack a much more effective punch than standard bioethical exhortations whose only force derives from the cogency of their arguments. Signatories to international covenants, on the other hand, have legally binding duties to protect and secure the human rights of their respective populations.

These three claims indicate the advantages of a strong relationship between bioethics and human rights. But, as the subtitle of this paper suggests, there are also good reasons to curb our enthusiasm regarding the potential of human rights to serve as the language of global bioethics. We are concerned that advocates of a human rights foundation for bioethics are making unreasonable and unsustainable demands on the language and conceptual framework of human rights. For example, Annas argues that reproductive cloning and genetic enhancement ought to be classified as a new category of ''crimes against humanity,'' and that scientists who develop these technologies are properly considered to be committing terrorist acts.[5] He claims that genetic technology undermines human rights and for that reason ought not, beyond certain limits, to be pursued.

We argue that in making these claims Annas runs together two distinct questions. The first question is whether there are convincing philosophical or ethical arguments against genetic technology; the second is whether genetic technology violates or threatens human rights. Annas clearly believes that the answer to the second question is affirmative. We argue that not only is the answer *not* straightforwardly affirmative, but, even if it is, it provides no answer (or substitute for an answer) to the first question. Human rights are, and ought

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to be, an important part of our thinking on many issues in bioethics, including the use of genetic technology, but they ought not to exhaust that thinking. As Loren Lomasky argues, "Concern for rights is a necessary cornerstone in the design of a social ethic, but it should not be confused for the complete edifice."[6] Appeals to human rights require justification; they do not merely replace philosophical or moral analysis.

The language and conceptual framework of human rights cannot, just by itself, answer all our moral and ethical questions concerning new technology. In this paper we examine Annas's argument against biotechnology, arguing that his appeal to human rights fails to establish convincing moral grounds for rejecting the technology. The language and framework of human rights is similarly unsuccessful in providing clear guidance on another key issue in bioethics, the distribution of, and individual entitlement to, healthcare resources. Advocates of a human rights foundation for bioethics argue for various so-called positive rights to goods and services, such as expensive AIDS drugs. In a companion piece published elsewhere,[7] we examine such claims and conclude that appeals to human rights cannot substitute for traditional ethical arguments over the allocation of scarce resources. There may well be a role for a carefully elaborated and circumscribed human right to health or healthcare, but whatever plausibility or cogency such a right enjoys will depend upon prior philosophical argument and the establishment of institutional frameworks for realizing its claims.

In both of these central issues in bioethics, genetic technology and access to healthcare, human rights alone cannot provide all the answers. This paper articulates our overriding concern that advocates of a human rights foundation for bioethics, such as George Annas, have inflated expectations of the ability of human rights to answer complex ethical questions. We attempt here to engage in some of the philosophical argumentation that must support appeals to human rights.

Annas on Genetic Technology[8]

Annas assumes that human rights and human equality are grounded in human dignity, and human dignity, in turn, is grounded in a common human nature. He then assumes that genetic technology offers possibilities for changing our common human nature or "fundamental human characteristics." From these two assumptions Annas concludes that any such changes to our common human nature will undermine the very basis of human rights and human equality.[9] This argument implicitly assumes that the kinds of changes that biotechnology promises—that is, changes to genetically based traits or characteristics—are the kinds of changes that threaten human nature. In other words, Annas assumes that the "human nature" that underpins human rights is essentially biological.

Having reached the conclusion that genetic technology threatens human rights and human equality, Annas then argues that human nature, our "fundamental human characteristics," should be protected from change. His arguments call for protection and preservation of the human species, protection from technology whose use, he believes, constitutes a new category of "crimes against humanity."

In addition, Annas has serious concerns about the potential of enhancement technology to lead to the creation of a new species of humans, the "posthumans." The differences between humans and posthumans, Annas predicts, will be such as to render one

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species inferior in the eyes of the other, leading to exploitation, enslavement, or even "genetic genocide."[10] In sum: genetic technology endangers our dignity, equality, and rights as human beings; it threatens our existence as a species; and it poses the specter of interspecies warfare.

There are three significant problems with Annas's argument against genetic technology. First, even if one remains agnostic on the question of whether human rights are based on human nature, Annas's assumption that human nature is reducible to biological traits is highly dubious philosophically. Even if it is the case that human rights are best thought of as founded on commonalities between all humans, *biological* commonalities are insufficient for this foundation. Some morally relevant characteristics track biological traits, but this is not necessarily so, and it is certainly not the case that the human genome, as it is currently constituted, is either necessary or sufficient for membership in the moral community. As Mary Anne Warren argues, "Genetic humanity . . . is at best an indicator, not an independently valid criterion, of moral status."[11]

Biological traits are not in themselves morally relevant: Whether a being reproduces sexually or by cloning is irrelevant, just by itself, to the moral status of that being. Such traits cannot therefore be the sole determinants of whether a being is entitled to claim rights or human rights.

Second, Annas's argument makes a significant assumption about the foundations of human rights. He claims that human rights have a single foundation, namely, human dignity, which, in turn, is grounded in biologically defined human nature. To argue successfully that genetic engineering undermines human nature, thereby threatening the foundation of human rights and so the rights themselves, Annas owes us an account of what that foundation is. But his argument contains no further analysis of the concept of dignity. One possibility is that Annas views dignity as a religious or metaphysical foundation for human rights, perhaps grounded in the claim that human beings are sacred or intrinsically valuable, created in the image of God. But this kind of foundational claim is highly controversial. Humans disagree about what kinds of beings they are and what, if anything, makes them special. To take any single philosophical or religious idea and claim that it is the foundation of a universal doctrine will not only vitiate the doctrine's claim to universality, but will render it illegitimate in the eyes of many of those to whom it is supposed to apply. This interpretation of dignity founders on the problem of pluralism.

Another interpretation of Annas's use of "dignity" claims that dignity is shorthand, or a placeholder, for a range of concepts that define human rights. For example, "dignity" could stand in for a single feature of human beings, such as agency.[12] Or it could stand in for the conditions of a fully human or flourishing life, such that a life of dignity is one in which a person has the capabilities necessary to flourish.[13] But this interpretation of dignity will not help Annas. If he wants to claim that dignity is necessarily threatened by genetic technology, then on this interpretation he would be guilty of begging the fundamental question. If dignity stands in for the conditions of a flourishing human life, then in claiming that it is threatened by genetic technology, Annas assumes precisely that which he intends to prove, namely, that genetic technology can only make life worse, not better. If dignity is equivalent to agency, then clearly it is not *necessarily* threatened by genetic technology, because most proposed

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interventions do not endanger agency, understood as self-determination or the capacity to choose goals and the freedom to pursue them. In short, if Annas intends dignity to be understood as a placeholder for agency or the conditions of a good life, his objection to genetic technology simply falls flat.

The third problem for Annas's argument concerns his worry that human use of genetic technology will result in inequalities between individuals and perhaps even changes so significant as to produce a species of "posthumans." Annas is concerned that humans and posthumans would not be *equal* in the sense required for the applicability of equal human rights. But the only sense in which Annas could surmise that humans and posthumans would not be equal is in the sense that the differences between them, in biological terms, would be significant. In this claim Annas fails to acknowledge that humans already vary greatly with respect to their biological characteristics, such as physical strength, intelligence, talents, aptitudes, and so on. Such variations are the *raison d'être* of human rights, whose very point is to equalize across differences.[14] The changes most likely to come sooner rather than later from genetic technology (boosts to immune defenses, memory, intelligence) will merely replicate the nature of the differences that already exist among individuals protected by human rights. So those rights will continue to protect individuals who may differ from us in significant ways—the differences themselves are morally irrelevant.

Moreover, Annas's attempt to argue for a ban on genetic technology simply overlooks the potential the technology has for good. At the very beginning of an era of enhancement, we should look ahead with a pragmatic optimism, rather than presuming the worst and predicting a future of science fiction horrors.[15] Annas may be exaggerating for rhetorical effect, but exaggeration does not obscure our basic point: Although we should proceed with caution, we should do so with an eye for the good outcomes of the technology as well as the bad.

In sum, Annas argues that human nature is the foundation of human rights, that human nature is threatened by genetic technology, and therefore that human rights are threatened by genetic technology. We have shown that this argument is highly problematic, given the difficulties of claiming that human nature is defined by fixed biological traits of the sort that may be altered through genetic technology, and Annas's failure to provide an account of human dignity adequate to justify his claim that it is the foundation of human rights. In this core argument Annas gives no reason to accept that genetic technology threatens either human nature or human rights.

More broadly, this discussion highlights the fact that appealing to human rights in philosophical and bioethical arguments is not straightforward. The ethical problems raised by genetic technology need to be carefully analyzed and thought through, but it is far from clear that human rights are of any help in doing this, particularly because this technology need not violate human rights. Annas's argument against genetic technology is an example of human rights language being deployed as a trump card, an ultimate and unarguable reason to oppose the technology. But, as our analysis shows, the deployment of this language requires careful thought, and even in the most significant of ethical debates, it may be neither appropriate nor helpful.

Conclusion

We agree with Jonathan Mann, Paul Farmer, and George Annas that bioethics,

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as it attempts to engage with problems of ethics and justice at the global level, should expand its methodological repertoire to include the concepts and analytical tools of the human rights movement. As bioethics expands beyond its traditional boundaries set by the physician–patient relationship and the practice of high-tech medicine in the developed world, it will need an ethic that is more responsive to the many public health crises—such as famine, AIDS, and pandemic flu—besetting the contemporary world. It needs, in other words, a population-based ethic.[16] Insofar as the human rights movement makes valuable contributions to this broader ethical agenda, bioethicists should begin to incorporate an appreciation of human rights perspectives and methods into their work.

The potential contributions of human rights to bioethics having been duly noted, we urge a modest, cautionary approach to this salutary methodological development. First, an appreciation for the potential helpfulness of human rights approaches does not warrant uncritical enthusiasm or, worse yet, boosterism on behalf of human rights. A general endorsement of human rights does not warrant attempts to shoehorn any and all moral, political, medical, or legal controversies into that linguistic and methodological framework. It bears repeating at this point that human rights constitute only a small, albeit supremely important, subcategory of the larger domain of moral value. Not every ethical or political problem, and not even every problem of justice, implicates legitimate claims of human rights.

Our concern is that Annas's argument against genetic technology is an example of just such shoehorning. Annas's claims that genetic technology threatens dignity and human rights do not bear up under scrutiny and should be replaced by substantial ethical analysis of the issues raised by genetic technology. It must be recognized that little progress can be made in such debates simply by using the language of human rights or gesturing vaguely toward them. What is required for progress is philosophical analysis of what the foundations of human rights are; only such analysis will tell us if and when human rights can be helpful in a particular ethical debate. Annas may be right to urge caution about embracing genetic technology, but his appeal to human rights in this argument is less than helpful. Such appeals, when unsubstantiated by philosophical or ethical analysis, weaken the currency of human rights. Moreover, the potential the technology has to affect all human beings does not necessarily make it a matter for human rights. Whether a human right is in fact violated by genetic technology will be the outcome of ethical analysis about the technology and its uses, not a replacement for such analysis.

In criticizing appeals to human rights in bioethics we do not wish to deny or denigrate the many contributions of the human rights movement to bioethics and to the cause of global justice. It has endowed people from every nation on earth with a common vocabulary and an increasingly valuable international legal structure for the designation, implementation, and oversight of rights to health and healthcare. Equally important, the human rights movement has empowered ordinary citizens and a vast array of NGOs with the critical tools required to bring state governments to account before the entire world for their negligent or oppressive behaviors. We would merely insist that, notwithstanding its inspiring accomplishments and potential to change the world for the better, the language of human rights does not and never will absolve us of the necessity of thinking together about what justice requires.

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Notes

1. Annas GJ. *American Bioethics: Crossing Human Rights and Health Law Boundaries*. New York: Oxford University Press; 2005:24.
2. See note 1, Annas 2005:24.
3. Baker R. Bioethics and human rights: A historical perspective. *Cambridge Quarterly of Healthcare Ethics* 2001;10:241–52. Roberto Andorno shares this view, calling human rights "the last expression of a universal ethics," and "a 'lingua franca' of international relations"; Andorno R. Biomedicine and international human rights law: In search of a global consensus. *Bulletin of the World Health Organization* 2002;8012:959–63.
4. For example, the United Nations' *International Covenant on Economic, Social, and Cultural Rights* (1966), and the corresponding *Covenant on Civil and Political Rights* (1966).
5. See note 1, Annas 2005:40.
6. Lomasky L. *Persons, Right, and the Moral Community.* Oxford: Oxford University Press; 1987:3.
7. Arras JD, Fenton EM. Bioethics and human rights: Access to health-related goods. *Hastings Center Report* 2009:39(5):27–38.
8. This section of the paper is drawn largely from Fenton EM. Genetic enhancement—A threat to human rights? *Bioethics* 2009;22(1): 1–7.
9. See note 1, Annas 2005:37.
10. See note 1, Annas 2005:51.
11. Warren MA. *Moral Status: Obligations to Persons and Other Living Things*. Oxford: Clarendon Press; 1997:19.
12. Griffin J. First steps in an account of human rights. *European Journal of Philosophy* 2001;9: 306–27.
13. Nussbaum MC. *Frontiers of Justice: Disability, nationality, species membership*. Cambridge, MA: The Belknap Press; 2006. See also Nussbaum M. Capabilities and human rights. In: de Greiff P, Cronin C, eds. *Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization*. Cambridge, MA: MIT Press; 2002.
14. Some level of physical similarity is assumed in claiming that two individuals stand in a relationship of justice to one another. But genetic enhancement technology will not produce humans so different from us that this relationship of justice will not obtain. We may be more different from an unenhanced and severely mentally disabled individual than we are from an enhanced individual with a better memory, yet, because we recognize the severely disabled person as standing in the relationship of justice to us, then we will also recognize the enhanced individual as a subject of justice.
15. Not all fictional accounts of a genetically engineered future are pessimistic. The X-Men comics, for example, portray the social and political conflicts between humans and "mutants," who are said to represent the next stage of human evolution. Importantly, the nonhumans and X-characters are portrayed, like the humans, as full agents, and peaceful coexistence among them all is viewed as possible and desirable in spite of prejudice against the mutants on the part of the unmodified humans.
16. Wikler D, Brock DW. Population-level bioethics: Mapping a new agenda. In: Dawson A, Verweij M. *Ethics, Prevention, and Public Health*. Oxford, UK: Clarendon Press; 2007.

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Human Rights and American Bioethics: Resistance Is Futile

GEORGE J. ANNAS

The Borg are always confident that humans will be assimilated into their collective hive and therefore that, as they say, "resistance is futile." In *Star Trek*, of course, the humans always successfully resist. Elizabeth Fenton and John Arras, like the Borg, resist the idea that humans are uniquely special as well as the utility of the human rights framework for global bioethics.[1] I believe their resistance to human rights is futile, and I explain why in

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